

MINUTES  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
January 22, 2018 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman, Paul Keller, Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis, Mike Winge, and Jeff Valiant

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill and Kim Kaiser, staff.

**MEMBERS ABSENT:** None

**ELECTION OF OFFICERS:**

Mrs. Rector stated the first order of business was to elect a chairman for the Board of Zoning Appeals to serve for 2018. She asked if there was a motion.

Doris Horn made a motion to elect Jeff Valiant back in as chairman. The motion was seconded by Mike Winge.

Being no other nominations Mrs. Rector called for a motion to close.

Mike Moesner voted to close the nomination and elect Jeff Valiant by acclamation and carried unanimously.

The Chairman stated they needed to elect a vice chairman for 2018.

Mike Moesner made a motion to elect Terry Dayvolt as vice chairman. The motion was seconded by Mike Winge.

Doris Horn made a motion to close and carried unanimously.

**SET MEETING TIMES AND PLACES:**

Mrs. Rector stated the meetings are to be held on the fourth Monday at 6:00 p.m. each month in the Commissioners meeting room on the third floor of the Court House except for May which will be the fifth Tuesday, May 29<sup>th</sup>, 2018 due to a holiday and December meeting will be Monday, December 17, 2018, due to the holidays. She said we may have to reset the place when the renovations are started. She stated they are talking about moving offices into this room while

they work on our offices. She said we may be meeting over in the Judicial Center in one of the court rooms, when it comes to that she will let them know.

Terry Dayvolt made a motion to approve the meeting dates place and times. The motion was seconded by Doris Horn and unanimously carried.

### **ADOPTION OF RULES AND REGULATIONS:**

Mrs. Rector stated the rules and regulations are the same as last year.

The Chairman called for a motion to adopt the rules and regulations for 2018.

Terry Dayvolt made a motion to accept the rules and regulations for 2018. Mike Winge seconded the motion and unanimously carried.

**MINUTES:** Upon a motion to accept the minutes for the regular meeting from November 27, 2017 made by Doris Horn and seconded by Mike Winge were approved as circulated.

Upon a motion to accept the minutes for no meeting on December 18, 2017 made by Jeff Willis and seconded by Mike Moesner were approved.

### **VARIANCES:**

#### **BZA-V-18-01**

**APPLICANT & OWNER:** David & Annette Goldenberg

**PREMISES AFFECTED:** Property located on the W side of Vine St. approximately 0' NW of the intersection formed by Vine St. & SR 68, Lynnville 306 W SR 68

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit to be issued for a manufactured home on a lot with an unattached accessory building located in the front yard in an "R-1A" One Family Dwelling zoning district. *Complete legal on file.*

David Goldenberg was present.

The Chairman called for a staff report.

Mrs. Rector stated we have all of the return receipts from the certified mail from the adjoining property owners. She said the existing use is an unattached accessory building. She said the surrounding zoning and land use for the surrounding properties are R-1A, single family dwellings, with residences or vacant. She stated there is no flood plain on the property. Mrs. Rector added the property has access to Vine St. and SR 68 but not an existing driveway. She said they will need to check with the Town of Lynnville about an entrance.

Mrs. Rector stated the land was previously split by other parties with the existing accessory building on the property. She said if the accessory building was not on the property or in another

location the single family dwelling could meet yard requirements and not need a variance but by ordinance the residence is to be in front of any unattached accessory buildings. She stated since this is a corner lot they can use, in this case SR 68 or Vine St. as their frontage. She added if they had used Vine St. as their frontage they would have been required to file a variance not meeting the rear yard setback of twenty-five feet. She stated it was her recommendation that he request this variance eliminating it being self-created by the accessory building being located on the lot and using SR 68 as the frontage and it meeting the setback requirements.

Mrs. Rector stated the applicant states on the application “to allow the location of a manufactured home on the lot with an unattached accessory building located in the front yard.”

She said a complaint has been filed by Patrick and Marianne Retter who live across Vine St. east of this property. She said they claimed allowing the variance would increase flooding issues. She stated the full complaint is in the back of your packets. She said she asked Steve Sherwood, County Assistant Engineer and over County Stormwater, to do an inspection regarding the complaint. She stated he reported upon inspection of the sight any drainage will run to the south and to the west of most improvements to this lot and will not affect drainage to the lot across the street to the east. She said she also spoke with Mr. Sherwood and he stated a lot of this water build up could be taken care of if the town would clean the roadside ditches.

Mr. Goldenberg stated that the ditch in the front is actually a state highway ditch and they are the ones that really need to take care of cleaning it.

Doris Horn stated that is where the water problem is really at is in the front along the state-right-of way.

The Chairman asked if Mr. Goldenberg had any questions.

Mr. Goldenberg replied he did not.

The Chairman asked if there were any questions from the Board.

Doris Horn stated she wanted to mention that every time they have a problem and when it rains it is there on SR 68 that it completely floods. She said at one time the state came in and dug ditches, everyone has closed the ditches up and every time it rains it is totally backed up. She stated that isn't the town's responsibility it has to go through the state. She stated that as far as the side ditches they are clean.

Mrs. Rector stated people who have property along SR 68 have filled in their drainage ditches and now the water stands in their yards because they filled them up.

Doris Horn replied yes, this is always the biggest complaint we have at the Town in the spring and fall. She said even the subdivision next to the fire department has closed all of their ditches up and they think it is the town's fault because their property is flooding. She said the town has a big ditch there by where Mr. Goldenberg is proposing building and then in front of the

Community Center there is a ditch dug by the state and the water just goes out except for those areas.

Mr. Goldenberg stated the ditch in front of the property next to him goes underneath their driveway and is filled in and the state told him the problem is the pipe has collapsed or has filled up with something and the state won't clean it up.

Mrs. Rector asked the culvert.

Doris Horn replied yes they are all clay and old and they have filled in.

Mr. Goldenberg stated someone needs to dig them up and fix them.

Doris Horn replied the town cannot do that because it is a state right-of-way.

Mrs. Rector stated that what Mr. Sherwood is saying is putting a manufactured home on this property is not going to affect the drainage or water runoff to anyone else. She said she wanted Mr. Sherwood to do that statement because she didn't know drainage so she had him to check it for us.

The Chairman asked Mr. Goldenberg if he was going to be raising the property any at all.

Mr. Goldenberg replied he wasn't planning on it. He said that if he did anything in his front yard it would exasperate the problem on down the street and he didn't want to do them to have their driveway totally flooded because it is flooded enough now.

Being no more questions from the Board, the chairman called for any remonstrators.

Marianne Retter approached the podium. She stated that her and her husband did send in the letter but they have owned their property a lot longer than he has. She stated the property on the north side of his barn is a very low lying area and for someone to build there they would have to raise it no matter how you look at it. She said it is a swamp back there. She stated this will increase the water onto them and the water onto the property to the west. She said they are to the east across Vine St. and they had such bad water problems they put a ditch down in their side yard and a berm in the back of it to re-route it. She stated her husband hand dug and redid the culvert along Vine St. because Lynnvile said to do whatever you have to do to get rid of your water problem. She stated there is a big manhole in the middle of the road and it pops the top off of it and the water just bubbles out of it. She said we have tremendous water problems there and they can build there but they are going to be in a swamp. She stated if there wasn't a variance as to something being wrong we wouldn't be here tonight. She said like the easement and the property lines between them and the road and what he is trying to build there. She stated there is a property to the north of him that is empty. She said she knows that doesn't do him any good and she wasn't there to do anything against him but there are several issues that you don't know by not living there.

Mrs. Rector stated just so you know if the building wasn't on the property he would already have a permit for a house and you wouldn't have had any say because we don't get into drainage on a lot for a residence. She said everybody needs to understand that it was subdivided years ago without going through our office and the building was stuck over there by itself. She stated that Mr. Goldenberg didn't have anything to do with that.

Mrs. Retter said it is just a barn, an empty barn.

The Chairman stated like Mrs. Rector said if the barn hadn't been there he wouldn't be meeting about it.

Mrs. Retter asked how he could be building something that would be narrow enough for that property and face it towards the front. She said it doesn't really matter but it is going to affect the water problems that we have on that end of Lynnville. She stated she lives on that end of Lynnville and everybody's water comes right down that hill into her basement.

Doris Horn replied he isn't going to actually disturb the dirt. She said he isn't building he is going to set a modular home on top of the ground. She said you are living on an incline, you can tell that when you come into Lynnville. She stated the problem is you get flooded because no one calls the state and she can't do it.

Mrs. Retter stated she has called the state several times.

Doris Horn replied she could help her with getting her to the right person. She said they need to dig the ditch out just like they did in front of the community center and fire department. She said if you notice when it rains really hard she is out there and so is Eric Erwin but she didn't know about Stacey Tevault. She stated they have taken pictures and the water comes down the hill and lies in front of those three or four homes because no one has a ditch and it is just flat land. She said if you go on either side the water is running out of Lynnville.

Mrs. Retter stated that the Town of Lynnville is saying there are no culverts although her husband went in and patched one culvert up and down on SR 68 and Vine St.

Doris Horn replied the culverts and ditches that you have on your property are your responsibility, mine are my responsibility and I pay taxes on it. She said they have to clean the ditches out themselves; we do that and have done it for forty years. She stated if the Town wants to run electrical and it has water and sewer lines going through them then the Town can get on that property but the front of the ditches are closed up. She said she has never seen those ditches open and she has lived in Lynnville since 1972.

The Chairman asked Doris Horn where the ditches would run to if they were open.

Doris Horn replied if those ditches were open on those pieces of property the water would go right down the ditch in front of the community center and fire station and then right across the road over by the stripper pits. She said they have dealt with this because that subdivision (she was on the Board when they put it in) has covered up every ditch and now they are complaining

because their yards are flooding. She said the retaining pond in front of the community center they closed it in as soon as she was off of the Board.

Mrs. Retter stated she has owned her property for twenty years and when that subdivision went in it got worse but that doesn't change the fact that he has to disclose to the people wanting to build on that property that it is a swamp. She said who wants to build on something that you can't walk out into your yard. She said she doesn't know about the measurements of the house or modular that is going to go in there so what about the easement or the feet from the property lines. She stated that is none of her business.

Mrs. Rector stated that he would meet the requirements with it being manufactured home, it is just the building that is already there causing the problem. She said otherwise he wouldn't have to be here at all.

Mrs. Retter asked don't you have to disclose the water.

Doris Horn stated that she was waiting for someone to come to the Board. She said no one has ever come to the Board because we cannot dig those holes. She said she could help her get information.

Mrs. Retter replied that she had been to Lynnville three different times.

Doris Horn replied that she had never seen her but she was off of the Board for ten years. She said if you ask me for help she would get her some help getting those ditches cleaned out but it has to be with the state.

Mrs. Retter stated it isn't necessarily the ditches that need to be cleaned out they have been closed forever.

Doris Horn and Mrs. Rector stated it has nothing to do with this.

Mrs. Rector stated she has a bunch of numbers and contacts for INDOT she can give her.

Mrs. Retter stated she would be more than happy to come up and get all the help they can get.

Doris Horn stated she would help her with that but it has nothing to do with Mr. Goldenberg putting a manufactured home here. She said he isn't going to move dirt he will be putting the house on blocks to meet code.

Mrs. Retter asked if there is room on both sides for all of the rules and regulations.

The Chairman replied yes.

Mrs. Retter asked if he was going to tell the people that want to buy the property about the water.

Mrs. Rector replied that is between him and the potential buyers if he even sells it. She said that is a legal question that we don't answer.

Mrs. Retter stated that is a disclosure that needs to be made.

Mrs. Rector stated not by us.

Doris Horn told Mrs. Retter the Town of Lynnville has a Board meeting next Tuesday. She said if you come to that meeting she will have numbers for her to call and she would help her.

Mrs. Rector asked Tuesday at what time.

Doris Horn replied 6:00 p.m. She said to call the Town and ask to get on the agenda.

The Chairman asked if there were any other remonstrators.

Chelsea Watkins and Blake Feldbusch approached the podium.

Chelsea Watkins stated that when they bought this home in August they moved from Chandler to Lynnville and their reason for doing this was the population per square footage. She said they did this because they were so close to other people in their homes. She stated they didn't move to Lynnville for that too. She said we are trying to grow their family and they can't do that with someone on top of them. She stated they are literally within feet of their garage and they can see through their entire house in that position. She said there is not enough space for them to put up a fence to be comfortable with it. She said that she understands the ditches are their problem and they plan on digging them up as soon as they can and putting blacktop back down. She said we are trying to grow a family in Lynnville. She stated she knows it was illegally split before they bought it but they didn't know that when they bought it. She said if that was a matter before they knew they couldn't take care of it now. She said she feels like the Lynnville population per square footage deserves so much more than that. She stated she knows that the value of their home can't be determined now by putting a modular home there even if it is considered a manufactured home but at this point once it is done it is done. She said they bought this home because it's a great value and they have a great opportunity to build up. She said they like their space.

Blake Feldbusch said he was curious about what the footage is for the requirements from their property to the road. He stated the only person he has seen taking measurements over on that property is Mr. Goldenberg he hasn't seen anyone else.

Mrs. Rector stated that she had shown Ms. Watkins the drawing before the meeting and he could look at it now if he wanted to.

Ms. Watkins said he wants to determine who actually did the measurements, was it just by David or was it by someone who zoned it.

Mrs. Rector replied that Mr. Goldenberg did the measuring to figure out where he had to set it to stay as far away from you and to stay out of the right-of-way. She said he pushed up with the porch and as far away from you as he can be and still meet the yard requirements. She stated they tried to work it out that he was far enough away from Vine St. and be as far away from you as he could be.

Ms. Watkins asked what we are considering the address, will it be SR 68 or Vine St.

Mrs. Rector replied he can choose.

Ms. Watkins stated that what she understands is that the front yard is in front of the front door of a house.

Doris Horn responded he is on a corner lot. She stated when you are on a corner lot you can turn your house either direction.

Mrs. Rector added on a corner lot anywhere in the county you can choose which road you use an address and we will assign it to you.

Ms. Watkins stated she does understand that the ditches are a problem which they plan on fixing but their backyard is currently about three inches deep in water and so is his.

Several people stated theirs is also.

Ms. Watkins stated the front of their house isn't bad they can walk out and not be just fine. She said it is the back yard that holds water and her concern is with someone living there like that it is going to sink because it is so flooded in the backyard.

Doris Horn replied again he isn't going to be digging the dirt up so it is still going to be what it is. She said it has nothing to do with this but she will get her some names of people who can help her with this. She said the backyard will be your problem but she can get her help with the front yard. She stated this still has nothing to do with this today. She said he isn't going to disturb anything and she knows this because her mother put up a modular home and they didn't have to disturb anything, they put the blocks up under the house and that is how it is.

Terry Dayvolt stated it looks to him if they get the ditching straightened out on the front of the property you could ditch down the property lines going north and south and take care of your water problem.

Ms. Watkins said she thinks the condos actually have a little ditch over there she just doesn't know if they need to dig down a little bit more because it isn't taking care of it.

Doris Horn stated call the Town Hall tomorrow and talk to Sherry, have her give you my number and we will set up a time and get together to get the water issue started.

Mike Moesner asked how far their garage is off of the property line.



Ms. Watkins replied maybe four feet.

Mike Moesner stated you are only splitting five feet from your garage to the back of the house.

Ms. Watkins replied honestly she thinks the line is right up to their brick landscaping the previous owner put in. She said she doesn't even know if it is four feet at that point.

Doris Horn asked on your garage.

Ms. Watkins replied yes, on their garage.

Doris Horn replied you have to remember back in those days when they built the homes they didn't have a planning commission so they built right on the property lines.

Terry Dayvolt stated he thinks the answer to a lot of their problems is to get with Doris Horn and get the ditches addressed out in front of the property and get the water out there and it will help all of you 100%.

Ms. Watkins stated that isn't their main concern their main concern is privacy.

Mike Moesner stated that isn't something we can address because property is owned by a person who has the right to do something with their property and if it is blocking your view then you need to buy the property if you don't want somebody to build something on it. He said a person has the right to do something with their property even though you may not like it and it may block your view from what you used to see but that is the right of the property owner.

Doris Horn said he is going to put a modular home there and it is going to look nice. She said the property next to it that is vacant had a tree growing up through it that is how bad that property looked. She stated you are going to increase the value of your property because that house was torn down so at least you don't have that to look at.

Blake Feldbusch said he was wondering if he meets everything and he is still on the front yard issue. He said if he puts that trailer in there sideways facing SR 68 yes he can meet front yard but he can't meet requirements but if he puts it in there sideways his front yard will be ...

Mrs. Rector replied if this building wasn't here and they are saying this is his front yard he could be twenty-five feet off of SR 68 he could be six feet to your property line to be his side yard lines. She said instead of being 20.5' from your property line if he knocked the building down he could move it to six feet from you so it could be worse, a lot worse. She stated we pushed it as far away from your property as possible so it could be worse legally.

Ascertaining no more questions from the Board the Chairman called for a motion.

Doris Horn made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.

- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.
- e) Driveway permit from the Town of Lynnville.

The motion was seconded by Paul Keller and unanimously approved.

**ATTORNEY BUSINESS:**

Attorney Doll stated he didn't have any other business just the hearing coming up in April.

**EXECUTIVE DIRECTOR BUSINESS:**

None

Being no other business the meeting adjourned at 6:40 p.m.

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Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held January 22, 2018.

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Sherri Rector, Executive Director